IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

WP(C).No. 34605 of 2005(T)

AGAINST THE ORDER IN IA.1391.05 IN OS.61/2001 of MUNSIFF COURT,KATTAPPANA

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PETITIONER:

PHILIP, S/O.THOMAS,
PULIPARAMBIL HOUSE, KATTAPANA P.O.,
KATTAPANA VILLAGE, UDUMBANCHOLA TALUK.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS:

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1. **JOHNY CHEERAMKUNNEL,**
   CHEERAMKUNNEL (PALASSERIL) HOUSE,
   KATTAPANA P.O., KATTAPANA VILLAGE,
   UDUMBANCHOLA TALUK.

2. **SOSAMMA PALASSERIL, W/O.JOHNY,**
   CHEERAMKUNNEL HOUSE, KATTAPANA P.O.,
   KATTAPANA VILLAGE, UDUMBANCHOLA TALUK.

BY ADV. SRI.JOICE GEORGE for R1 & R2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.34605/2005 T

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.NO.61/2001 OF THE MUNSIFF'S COURT, KATTAPANA DTD. 17/03/2001.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT IN O.S.NO.61/2001 OF THE MUNSIFF'S COURT, KATTAPPANA DTD. 11/06/2003.**

EXT.P3: **COPY OF the I.A.NO.1391/2005 FILED O.S.NO.61/2001 OF THE MUNSIFF'S COURT, KATTAPPANA DTD. 5/11/2005.**

EXT.P4: **COPY OF THE MEMO DTD. 2/11/2005 FILED IN O.S.NO.61/2001.**

EXT.P5: **COPY OF THE ORDER PASSED BY THE MUNSIFF'S COURT KATTAPPANA IN I.A.NO.1391/2005 IN O.S.NO.61/2001 DTD. 2/12/2005.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.34605 of 2005

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Dated: 10th July, 2007

JUDGMENT

Ext.P5 order by which the learned Munsiff has dismissed an application for amendment is under challenge in this Writ Petition under Article 227 of the Constitution initiated by the plaintiff. The amendment sought for was to convert the suit which was originally for prohibitory and mandatory injunction as one for recovery of possession and for ancillary reliefs. The amendment became necessary in the light of the Commissioner's report which was submitted on 22.8.2005. The amendment application I am informed was filed on 2.11.2005.

2. Mr.Philip T.Varghese, learned counsel for the petitioner submits that though there is some delay, learned Munsiff is not justified in dismissing the amendment application on the ground of delay.

3. Mr.Joice George, learned counsel for the respondents however would support Ext.P5. According to him, there is no warrant for setting aside Ext.P5 under the visitorial jurisdiction of this court which is very narrow and which is not expected to be invoked against each and every order.

4. Having regard to the rival submissions made at the Bar, I am of the view that the learned Munsiff was bound to allow the amendment application since the amendment is necessary for resolving the real controversies involved in the suit and bringing a correct quietus to the disputes between the parties and since no prejudice would have been caused to the respondents. Accordingly, I set aside Ext.P5 and allow I.A.No.1391/05 but only on condition that the petitioner shall pay to the respondents either directly or through their counsel in this court or in the court below a sum of Rs.1000/- within three weeks from today. Once payment is made as above and the order becomes operative, the learned Munsiff will grant opportunity to the respondents for filing additional written statement in the suit, formulate additional issues on the basis of the contentions therein and dispose of the suit at the earliest in accordance with law.

The Writ Petition is disposed of as above. No costs.

srd **PIUS C.KURIAKOSE, JUDGE**